



PATENT

Docket: 1232-4512

IFW 2612

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : TANAKA
Serial No. : 09/256,411 Art Unit : 2612
Filed : February 24, 1999 Examiner : J. Hannett
For : IMAGING SENSING METHOD, IMAGE SENSING APPARATUS,
CONTROL METHOD THEREFOR, AND STORAGE MEDIUM

PETITION TO EXPUNGE
ERRONEOUSLY FILED DOCUMENT UNDER 37 CFR § 1.59(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby requests that the certified copy of Japanese Application No. 2002-104484 (earlier filed in Japan on April 5, 2002) submitted to the United States Patent and Trademark Office (USPTO) on May 30, 2003, be expunged from the application file because the certified copy was erroneously and unintentionally filed in the above-identified application. A check in the amount of \$130.00 to cover the requisite petition fee accompanies the present petition.

DISCUSSION

On February 24, 1999, the present application was filed with the USPTO. The original application papers correctly identified and claimed foreign priority under 35 U.S.C. § 119(a) to earlier filed Japanese Application Nos. 10-061970, filed February 27, 1998 and 10-071545, filed March 20, 1998. Certified copies of these Japanese applications were appropriately filed with the USPTO on May 10, 1999.

On May 30, 2003, a paper entitled "CLAIM TO CONVENTION PRIORITY" was improperly filed in the instant application. The improper Claim to Convention Priority paper included a certified copy of Japanese application 2002-104484 (JP'484 application) that

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correctly belongs to another unrelated pending application for which a claim for foreign priority thereon has been made.

On July 10, 2003, Applicant filed a first Petition to Expunge Erroneously Filed Document Under 37 CFR 1.59(b) requesting that the erroneously filed certified copy of the JP'484 application be expunged from the instant application. A decision that dismissed the July 10, 2003 Petition as moot was mailed by the USPTO on July 22, 2003. The USPTO stated that "[w]hile applicant has met the requirements set forth above, the Japanese Application No. 2002-104484 cannot be found in the instant application file." Applicant has now confirmed, via the current availability of Image File Wrappers through the Patent Application Information Retrieval (PAIR) system from the USPTO website, that the May 30, 2003 Claim to Convention Priority and the certified copy of the JP'484 application have been matched, scanned, and placed of record in the image file wrapper of the instant application.

On this basis, Applicant is again requesting, via the present Petition, that the May 30, 2003 Claim to Convention Priority and certified copy of the JP'484 application be expunged from the instant application, pursuant to 37 CFR § 1.59(b). As forth in Section 724.05 of the Manual of Patent Examining Procedure, at Item III, Applicant requests that the certified copy of the JP'484 application (Japanese Application No. 2002-104484) erroneously submitted on May 30, 2003 be expunged from the instant application file. Applicant believes that the USPTO can expunge and return the subject certified copy prior to issuance of any patent on the present application since the present application has not yet been allowed and/or issuance thereof as a patent is not currently eminent. In addition, Applicant hereby states that the certified copy of the JP-484 application was unintentionally submitted and failure to have it expunged may cause Applicant irreparable harm.

CONCLUSION

Accordingly, Applicant request that the erroneously filed Claim to Convention Priority and accompanied certified copy of Japanese Application No. 2002-104484, incorrectly filed with the was on May 30, 2003 in the instant application be expunged.

AUTHORIZATION

The Commissioner is hereby authorized to charge any insufficient fees in regard to this paper, or refund any overpayment, to Deposit Account No. 13-4503, Order No. 1232-4512.

Respectfully submitted,
MORGAN & FINNEGAN LLP

Dated: January 21, 2005

By: 

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